

**CITY OF NEWPORT BEACH
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, JUNE 20, 2013
REGULAR MEETING – 6:30 p.m.**

MICHAEL TOERGE
Chair

BRADLEY HILLGREN
Vice Chair

FRED AMERI
Secretary

TIM BROWN
KORY KRAMER
JAY MYERS
LARRY TUCKER

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JUNE 20, 2013
REGULAR MEETING – 6:30 p.m.**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. RECOGNITION OF CHAIR MICHAEL TOERGE FOR HIS DEDICATION AND YEARS OF SERVICE ON THE PLANNING COMMISSION.

V. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

VI. REQUEST FOR CONTINUANCES

VII. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JUNE 6, 2013

Recommended Action: Approve and file

VIII. CURRENT BUSINESS

**ITEM NO. 2 RECOMMENDATION PERTAINING TO RESIDENTIAL LOT MERGERS (PA2012-102)
Site Location: Citywide**

Summary:

The Planning Commission has concluded its review of issues and potential regulations pertaining to residential lot mergers. A memorandum from the Planning Commission to the City Council summarizes their discussions and recommendation.

CEQA Compliance:

This item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 1506(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Code Amendment CA2012-007, which is not subject to action at this time, is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – Class 5 (Minor Alterations in Land Use Limitations) because the properties involved have an average slope of less than 20 percent; and the proposed amendment would not result in any changes in land use or density.

Recommended Action:

1. Review draft memorandum and direct staff to submit the Planning Commission's findings and recommendation to the City Council.

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 3 MOTION FOR RECONSIDERATION

ITEM NO. 4 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

**ITEM NO. 5 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR
REPORT**

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

X. ADJOURNMENT

Comments on June 20, 2013 Planning Commission Agenda

Comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229). ~~strikeout~~ underline format is used to suggest changes to the passages quoted in *italics*

Item No. 1 Minutes of June 6, 2013

Page 2:

- Line 1: "... and a slide she prepared on behalf of a request by Commissioner ~~Tucker~~ Toerge regarding Ocean Boulevard."
- Paragraph 2: "Discussion followed regarding a budget for the Civic Center and ~~wondered~~ if whether it is not a ~~stand-along~~ stand-alone project with bond monies."
- Paragraph 3: "~~Deputy~~ Public Works Director David Webb reported that..."
- Paragraph 8: "Jim Mosher expressed concern regarding the ability to understand the supporting material relevant law..."
 - [note: I continue to think the state law under which the staff report said the Item 2 hearing was being held – California Government Code Section 65401 – requires an annual General Plan compliance review of **all** planned public works projects within the City, not just the City-funded ones.]

Page 4:

- Paragraph 4: "Jim Mosher addressed specific findings and reported that ~~a the~~ section of the Municipal Code ~~that was~~ under discussion had been recently changed by Council. "

Item No. 2 Recommendation on Residential Lot Mergers (PA2012-102)

In PC 1 (Draft memorandum) --

Page 2 (page 6 of PDF):

- paragraph 2: "... yet could still be ~~in-compatible~~ incompatible with the lots that adjoin it ..."
- paragraph 5: "4. Increased setbacks and floor area restrictions ~~and~~ for merged lots ~~creates~~ create inequities."
- paragraph 6: "Modifying the development standard would ~~create~~ make several existing structures nonconforming." [note: I still don't understand how this would happen if the proposed code change were to affect future mergers only.]
- paragraph 7: I think a fuller explanation of regulation by "lot coverage" is needed. What is it? And how would it negate the effect of increased setbacks?
- In the proposed Recommendation 1, it is unclear if items **a**, **b** and **c** are the *only* matters that may be considered in making the required finding.

Page 3 (page 7 of PDF):

- In Recommendation 2, I believe there was testimony that the Ocean Boulevard lots, before merging, were already larger than most in the area. Were they nonetheless non-conforming in some respect, exempting the merger from further scrutiny under the suggested rule?

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, June 6, 2013
REGULAR MEETING
6:30 p.m.

I. **CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Ameri

III. **ROLL CALL**

PRESENT: Ameri, Myers, Toerge, and Tucker

ABSENT (Excused): Brown, Hillgren, and Kramer

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Deputy Public Works Director David Webb; Melinda Whelan, Assistant Planner; and Patrick Alford, Planning Manager

IV. **PUBLIC COMMENTS**

Chair Toerge invited those interested in addressing the Commission to do so. There was no response and Chair Toerge closed the Public Comments portion of the meeting.

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 **MINUTES OF MAY 9, 2013**

Recommended Action: Approve and file

Chair Toerge acknowledged comments received from a member of the public, Jim Mosher.

Motion made by Commissioner Tucker and seconded by Commissioner Ameri and carried (3 – 1), to approve the minutes of May 9, 2013, as amended.

AYES: Ameri, Toerge, and Tucker

NOES: None

ABSTENTIONS: Myers

ABSENT: Brown, Hillgren, and Kramer

VII. **NEW BUSINESS**

ITEM NO. 2 **REVIEW OF PRELIMINARY FISCAL YEAR 2013-2014 CAPITAL IMPROVEMENT PROGRAM (PA2007-131)**
Site Location: Citywide

Assistant Planner Melinda Whelan introduced the item and highlighted a list of Capital Improvement Projects for Fiscal Year 2013-2014 and the related General Plan policies with which they are consistent. Ms. Whelan referenced a CIP presentation which was presented to Council and is

attached to the report and a slide she prepared on behalf of a request by Commissioner Tucker regarding Ocean Boulevard.

Commissioner Tucker addressed an item included in the CIP related to replacement of the Park Avenue Bridge, which is adjacent to a property that he owns. He reported that upon discussion of that item, he will recuse himself and will abstain from voting on the matter.

Discussion followed regarding a budget for the Civic Center and wondered if it is not a stand-alone project with bond monies.

Deputy Public Works Director David Webb reported that most of the money is from bond proceeds and that there is \$500,000 in the budget that will carry over to this year.

Discussion followed regarding Ocean Boulevard and the possibility of using lighter asphalt to blend in with the lighter colored streets rather than darker colored asphalt that stands out.

Ensuing discussion pertained to planning monies attached to construction projects as detailed in previous CIP presentations, funds allotted for community outreach, and funds budgeted for the Marina Park project.

Mr. Webb addressed the amounts budgeted for the various phases of the latter and the need to make additional allotments as the project moves into other phases.

Interested parties were invited to address the Commission on this matter.

Jim Mosher expressed concern regarding the ability to understand the supporting material and commented on the opportunity for obtaining public input and review of the various proposed projects by the Commission. He felt that all of the projects should be listed for review and that they should be consistent with all elements within the General Plan. He referenced a code section and presented an example of an inter-agency project noting that it is not included in the list. He hoped that a comprehensive list will be provided in the future.

There being no others wishing to address the Commission, Chair Toerge closed public comments for this matter.

Commissioner Ameri agreed that the list should include those projects with which other agencies are involved. He felt it would be helpful to have a comprehensive view of what is being done in the City.

Assistant City Attorney Leonie Mulvihill addressed the appropriate General Plan section related to the CIP noting that it requires the determination of consistency with the General Plan, which is the purpose of tonight's action. She noted that the code section referenced by Mr. Mosher is separate and pertains to the obligation of outside agencies to notify the City of projects affecting it.

Commissioner Ameri addressed the need for having additional information through a comprehensive list of projects affecting the City.

Chair Toerge clarified the action needed at this time.

Motion made by Commissioner Tucker and seconded by Commissioner Myers and carried (3 – 1), to determine that the CIP projects are consistent with the policies of the General Plan and direct staff to report this finding to the City Council.

AYES: Ameri, Myers, and Toerge
NOES: None
ABSTENTIONS: Tucker
ABSENT: Brown, Hillgren, and Kramer

ITEM NO. 3 DISCUSSION OF RESIDENTIAL LOT MERGER CODE AMENDMENT (PA2012-102)

Planning Manager Alford presented background on the aforementioned item and noted prior direction received from the Commission to consider the possibility of revising the findings for lot mergers, setbacks based on lot width, maintaining floor area limits, exempting substandard lots, applying the requirements City-wide, keeping consistent with development patterns, and mergers involving more than two lots. He noted an example of how the findings can be modified to provide additional direction and clarity to decision makers. Mr. Alford reported receiving comments from Commissioner Tucker making minor modifications to the proposed amendment.

Commissioner Tucker addressed challenges with the original language proposed and noticed distinctions between lot mergers and what gets developed. He commented on the Ocean Boulevard project and felt that the language needed clarity and that the house plans should not have been entertained at all. He addressed surrounding patterns of development and excessively large lots as well as the need to develop appropriate recommendations for the City Council.

He reviewed details of the revised amendment highlighting the language that he is proposing relative to the findings. He addressed compatibility and felt that the new language increases clarity.

Chair Toerge agreed with the need to eliminate ambiguity. He questioned using "nearby" rather than "adjacent or adjoining" and agreed with the need for clarity. He agreed with evaluating lots rather than developments when considering lot mergers and addressed the use of "unreasonable" rather than "material detriment" and noted the rights of property owners to build onto their properties without causing a detriment to adjacent lots.

Commissioner Ameri agreed with separating lot mergers from development, allowing for increased flexibility and previous projects considered. He addressed tying the orientation and development of properties to lot mergers and felt that they should be separate from each other.

Commissioner Myers suggested directing staff to develop a physical dimension as a guideline for defining "nearby," to provide some physical standard that is not arbitrary, including "defining adjacent or adjoining."

Commissioner Tucker stated agreement with Commissioner Myers comments.

Discussion followed regarding the need for consistency with the surrounding development and clarifying "adjacent" and "adjoining". It was noted that the term "nearby" is not clearly defined.

Assistant City Attorney Mulvihill commented the use of "nearby" in terms of serving the intent and the use of "unreasonable" versus "material detriment". She stated that "material" references specific things and stated the preference for the use of "unreasonable" because it will take a common sensible approach and will be evaluated on a case-by-case basis.

A straw vote of the Commission resulted in agreement to use the word "unreasonable".

Mr. Alford addressed suggestions regarding setbacks and tying them to the width of lots and setting minimum or maximum distances. He added that floor/area ratios can be controlled by increasing setbacks. He addressed side setbacks and issues related to areas outside the R-1 Zoning District and noted that they already have wider setbacks, larger lot requirements and are controlled by lot coverage. He listed the areas involved that are controlled by lot coverage rather than floor/area limits and addressed non-conformity.

Discussion followed regarding the process for going forward, options available, and developing recommendations for the City Council.

Interested parties were invited to address the Commission on this item.

Jim Mosher addressed specific findings and reported that a section of the Municipal Code that was recently changed by Council. He commented on reasons why this item was sent back to the Planning Commission by the City Council and approval by the Zoning Administrator of lot mergers, conditions of approval and suggested changes to the language.

There being no others wishing to address the Commission, Chair Toerge closed public comments on this item.

Commissioner Tucker commented on setbacks, Council's intent, and allocation of mass and the possibility of adding language to allow flexibility for the applicant for locating the mass/bulk. He felt that the Zoning Code should be amended to address the issue of lot mergers.

Chair Toerge addressed consistency when considering lot mergers and the possibility of conditional approval.

Commissioner Myers stated agreement with Commissioner Tucker in terms of needing to adjust the Zoning Code.

Discussion followed regarding side setbacks, massing of structures, creating burdens on adjacent properties, establishing clear standards for setbacks (i.e., ten percent of the lot width), setting minimum/maximum setbacks, and benefits of allowing for increased flexibility.

Commissioner Myers noted that lots created by mergers result in different lots and should be treated differently as they are developed. He noted it is preferable to allow owners the flexibility to create their own designs.

Chair Toerge addressed comments submitted by Commissioner Tucker in terms of "adjacent" and/or "adjoining" lots and agreed with deleting "nearby".

The matter was agreeable to all Planning Commissioners.

Discussion followed regarding avoiding rendering non-merged lots non-conforming and developing policies that are clear and allowing for increased flexibility.

The Planning Commissioners agreed with recommendations relative to setback issues.

Ensuing discussion pertained to floor/area ratio limitations being no different after the merge than before the merge and adding a provision to the Zoning Code that would allow a review of merged lots.

Mr. Alford summarized a recommendation to the City Council from the Planning Commission indicating that they should consider revising the findings per discussion this evening and that if there are additional concerns regarding massing or bulk, that they should consider revising the Zoning Code to place further restrictions on merged lots.

Ms. Mulvihill noted that the item tonight is simply a discussion and that Mr. Alford will report back to the City Council on the substance of the discussion.

At Chair Toerge's suggestion, Deputy Community Development Director Wisneski reported that the matter will be presented to the Planning Commission at its meeting on June 20, 2013, in order for the Planning Commission to develop formal recommendations to the City Council.

Commissioner Tucker reported that he will provide language to staff regarding a proposed process.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION - None

ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Wisneski reported on actions taken by the City Council during its last meeting, which included an initiation to amend the General Plan to investigate development potentials and the establishment of an advisory committee to support the amendment process.

She added that the Planning Commission can move forward with its meeting scheduled on June 20, 2013, since the Commission has now directed staff to return with consideration of a recommendation to the City Council regarding lot mergers.

ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES – None

Commissioner Tucker requested adjourning the meeting in memory of Isidore C. Myers, a close friend of his and father of Commissioner Myers.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:55 p.m. in memory of Isidore C. Myers.

The agenda for the Regular Meeting was posted on May 31, 2013 at 2:00 p.m., on the City Hall Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Michael Toerge, Chairman

Fred Ameri, Secretary

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

June 20, 2013 Meeting
Agenda Item 2

SUBJECT: Recommendation Pertaining to Residential Lot Mergers (PA2012-102)

PLANNER: Patrick J. Alford, Planning Manager
(949) 644-3235, palford@newportbeachca.gov

SUMMARY

The Planning Commission has concluded its review of issues and potential regulations pertaining to residential lot mergers. A memorandum from the Planning Commission to the City Council summarizes their discussions and recommendation.

RECOMMENDATION

Review draft memorandum and direct staff to submit the Planning Commission's findings and recommendation to the City Council.

INTRODUCTION

Background

On August 14, 2012, the City Council initiated an amendment of the Zoning Code and the Subdivision Code that may involve modifying residential development standards so that the merger of two or more lots result in no net decrease in the setback area and no net increase in the buildable area. The Council also suggested the amendment would only apply to the single-unit and two-unit zoning districts of Balboa Island, Balboa Peninsula, Corona del Mar, Lido Isle, and West Newport.

On January 17, 2013, the Planning Commission voted to recommend approval of Code Amendment CA2012-007 to the City Council. The amendment would modify the residential development standards so that the merger/reconfiguration of two or more lots would not result in an increase in the maximum amount of floor area that could have otherwise been developed prior to the merger/reconfiguration.

On February 12, 2013, the Council held a public hearing on the amendment but did not take action. Instead, the Council requested the issue be discussed at a future Council Study Session so that direction could be provided to staff. The Council Study Session was held on April 9, 2013, but the Council did not have adequate time for discussion and opted to refer the matter back to the Planning Commission.

On May 9, 2013, and June 6, 2013, the Planning Commission conducted discussions on residential lot mergers to explore this issue further and provide direction to staff. Minutes from these meetings are provided as Attachment PC3.

DISCUSSION

The attached memorandum (Attachment PC-1) reports the Planning Commission's findings and recommendations to the City Council. It is recommended that the City Council revise Finding No. 5 of Section 19.68.030 (H) of the Subdivision Code to provide better guidance to decision makers as to the type of lot mergers the City is attempting to avoid.

No changes to either the required minimum side setback or maximum floor area limit are recommended; however, it is recommended that should the City Council decide such changes are needed, consideration should be given to exempting mergers that bring a property into conformity or into greater conformity with the minimum lot width and lot area requirements of the Zoning Code.

Environmental Review

This item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 1506(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Code Amendment CA2012-007, which is not subject to action at this time, is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – Class 5 (Minor Alterations in Land Use Limitations) because the properties involved have an average slope of less than 20 percent; and the and proposed amendment would not result in any changes in land use or density.

Public Notice

This item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Patrick J. Alford, Planning Manager

Submitted
by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft memorandum
- PC 2 Draft communiqué recommended by Commissioner Tucker
- PC 3 Meeting Minutes - May 9, 2013, and June 6, 2013

Attachment No. PC 1

Draft Memorandum



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
100 CIVIC CENTER DRIVE
NEWPORT BEACH, CA 92660
(949) 644- 3200**

Memorandum

To: City Council
From: Planning Commission
Date: July 23, 2013
Re: Findings and Recommendations on Residential Lot Mergers

Introduction:

Recent lot mergers have raised the question of whether the resulting larger lots and potentially larger dwellings are desirable and whether additional regulations are needed to preserve the character of residential neighborhoods. On April 9, 2013, the City Council referred this issue to the Planning Commission to determine if this is a matter of concern to the City and, if so, how this issue should be addressed.

The Planning Commission reviewed this issue at public meetings on May 9, 2013, and June 6, 2013. The Planning Commission reviewed examples of recent lot mergers and considered various regulations used in other cities to control lot mergers and the development on merged lots.

Findings:

1. Residential lot mergers are not a City-wide issue.

The City is not being overwhelmed with applications for residential lot mergers. Since 2008, the City has received fifteen (15) lot merger applications, an average of three annually. Most of these applications are for properties in the older areas of the City (e.g., the Balboa Peninsula and Corona del Mar) and involve the merger of two (2) lots that do not meet the minimum lot width or area requirements of the Zoning District. Most lot mergers would bring the property into greater conformity with Zoning Code standards. Therefore, residential lot mergers are not significantly affecting the quality and character of the City as a whole.

2. Residential lot mergers can affect properties that are close-by.

While residential lot mergers are not transforming the City, they can present compatibility issues with properties that are in close proximity. A merged lot may be consistent with other lots in the larger neighborhood in terms of lot area and width, yet could still be in compatible with the lots that adjoin it and/or those adjacent.

3. The findings required to approve a lot merger need revision.

Section 19.68.030 (H) (5) of the Subdivision Code requires a finding that “the lots as merged will be consistent with the surrounding pattern of development and will not create an excessively large lot that is not compatible with the surrounding development.” Both the Planning Commission and the City Council have struggled with this vague and ambiguous language. This finding needs to be revised to provide better guidance to decision makers as to the type of lot mergers the City is attempting to avoid.

4. Increased setbacks and floor area restrictions and for merged lots creates inequities.

When residential lots are merged, or otherwise reconfigured, setback areas are eliminated resulting in a larger buildable area and potentially larger dwellings. Increasing the side setbacks would reduce the buildable area and maximum floor area allowed. Modifying the development standard would create several existing structures nonconforming. Applying these modified standards to lots created after the effective date of the amendment would create two setback standards based on the date the lot was created. This could result in two abutting lots having different setback standards and floor area limit standards.

Furthermore, modifying residential development standards so that the maximum floor area does not exceed that allowed prior to the merger only works in the R-1, R-BI, and R-2 Zoning Districts. However, the vast majority of properties designated for single-unit and two-unit development are within Zoning Districts where development is regulated by lot coverage, not by a floor area ratio. Therefore, increasing the side setback requirement would not reduce the amount of floor area that could be developed in these areas.

Recommendations:

1. Revise Finding No. 5 of Section 19.68.030 (H) of the Subdivision Code to read:

5. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:
 - a. Whether development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.
 - b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.

- c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the Zoning District.
- 2. Should the City Council decide that increased side setbacks and/or floor area limit restrictions for merged lots is warranted, consideration should be given to exempting mergers that bring a property into conformity or into greater conformity with the minimum lot width and lot area requirements of the Zoning Code. If the Council determines an amendment to the development standards is warranted, it is anticipated that the matter would return to the Planning Commission to formulate a recommendation to the specific language.

Attachment No. PC 2

Draft communiqué recommended by Commissioner Tucker

DRAFT

City of Newport Beach Planning Commission
Lot Merger Report to City Council
June 20, 2013

The City Council referred the City's current lot merger process as set forth in the Subdivision Code to the Planning Commission for review. Based upon staff input, it appears the Council (i) has concerns with the increase in floor area that could be built on merged lots compared to the aggregate footage possible prior to a merger; (ii) would like the Commission to review appropriate setbacks that should apply to merged lots; (iii) would like Commission input as to which areas of the City changes to the merged lot process would apply; and (iv) would like suggestions from the Commission on how to clarify the language of Section 19.68.030 (H) 5 of the Subdivision Code. While lot mergers do not happen that often, when they occur in older subdivisions in the City such as Balboa Island, the Peninsula or in old Corona Del Mar to name a few, they can generate concern among neighbors and property owners alike.

After reviewing the lot merger process at three public hearings, the Commission respectfully submits the following:

Recommendations:

1. Limit the aggregate amount of footage that may be developed on merged lots to the footage that could have been developed on the merged lots in the aggregate prior to their merger. See suggested language in staff report.
2. Do not modify required setbacks. The Commission believes that changing setback requirements on merged lots could create non-conformities and give rise to arguments about the fairness of substantially similar lots being treated differently depending only on the date of merger of the lots. However, if the Council is concerned about the impacts to other properties that can occur from development of merged lots, the Council may want to consider dealing directly with the development on merged lots as part of the Zoning Code. See language below concerning mass and bulk.
3. Apply limitations on development on merged lots only to those areas of the City which measure the allowed development based upon a floor area ratio computation. Those zones where allowed development is based upon lot coverage should not be modified as a result of a lot merger. Merged lots in those areas would have only the square footage restrictions that apply to any other lot in those zones. So once lots are merged, they are like any other lot in those zones.
4. Revise language of finding H5 in Section 19.68.030 (a required finding) to clarify that the lot merger section applies only to the merger of lots, and does not pertain to what may be constructed on the merged lots. The Commission believes that lot mergers should be reviewed under the requirements of the Subdivision Code so an application for a lot merger should not require the evaluation of a house that is or may be proposed for the merged lots. While the goal of the proposed language change is to create more clarity, it is also important that it retain flexibility for the decision-makers based upon the facts and circumstances of each individual application. See suggested language in staff report.

Possible Mass and Bulk Considerations on Merged Lots:

If the Council so desires, the Commission could consider modifications to the Zoning Code so that the location of square footage of a house on merged lots would be evaluated prior to the plan review process. So while the amount of square footage of a house on merged lots (known as **mass**) would not be subject to further limitation, the location of that mass (known as **bulk**) could be reviewed in some fashion and with reasonably objective standards before the applicant goes to the expense of preparing working drawings. This is not an alternative the Planning Commission is recommending, but it is something that could be considered if the Council desires to regulate the placement of bulk on merged lots in given areas of the City.

Attachment No. PC 3

Meeting Minutes - May 9, 2013, and June 6, 2013

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, May 9, 2013
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Commissioner Brown

III. ROLL CALL

PRESENT: Ameri, Brown, Hillgren, Toerge, and Tucker

ABSENT (EXCUSED): Kramer (arrived 7:36 p.m.) and Myers

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; and Patrick Alford, Planning Manager

IV. PUBLIC COMMENTS

Chair Toerge invited those interested in addressing the Commission to do so at this time.

Jim Mosher commented on the Housing Element considered at the last Planning Commission meeting, noting that the Commission found several problems with the document and that Commissioner Tucker's motion at the time was to approve it, subject to everyone sending in written comments to staff to incorporate into the presentation to Council. He noted that references to the Government Code related to "Greenlight" restrictions are out of date and the language needs to be clarified. He reported that although the Commission found no substantive problems with the document, there were a number of details that needed correction/clarification.

There being no others wishing to address the Commission, Chair Toerge closed the Public Comments portion of the meeting.

V. REQUEST FOR CONTINUANCES - None

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF APRIL 18, 2013

Chair Toerge noted that Mr. Mosher submitted written suggestions for changes to the minutes as well as Commissioner Tucker.

Interested parties were invited to address the Planning Commission on this item.

Jim Mosher noted additional corrections to the minutes. He stressed the importance of speaking clearly and ensuring that the microphone is on and suggested retaining speaker cards for the correct spelling of speakers' names and the timing marks within the minutes.

Motion made by Commissioner Tucker and seconded by Commissioner Brown and carried (5 – 2), to approve the minutes of April 18, 2013, as corrected.

AYES: Ameri, Brown, Hillgren, Toerge, and Tucker

NOES: None

ABSTENTIONS: None

ABSENT (EXCUSED): Kramer and Myers

VII. OTHER BUSINESS**ITEM NO. 2 RESIDENTIAL LOT MERGER CODE AMENDMENT - (PA2012-102)****Site Location: City of Newport Beach**

Planning Manager Patrick Alford provided a presentation addressing previous consideration by the Commission and Council, as well as direction by Council to return the item to the Planning Commission for further consideration. He reported that lot mergers decrease side setback areas and potentially increase the allowed floor area. He noted the number of lot merger applications submitted per year and addressed previous locations, types of lot mergers, clarification of "substandard" lots, nonconforming lots, the need to maintain the character of the community, the potential for unintended consequences, and increasing buildable square footage because of losing side setbacks. He presented examples of different lot mergers and floor area analyses based on typical lot sizes and buildable areas.

Mr. Alford presented a review of current standards and reported that General Plan policies do not necessarily apply to lot mergers, but rather, to residential development in general. He addressed related General Plan policies and applicable Zoning Code provisions as well as design criteria.

Mr. Alford addressed minimum and maximum lot sizes, ensuring that lots are consistent with surrounding areas and potential approaches in considering lot mergers. He presented options for the Commission to consider including applying standards to specific areas or city-wide.

Discussion followed regarding avoiding efforts to restrict lot mergers, the need to define "excessively large lots" as well as compatibility with surrounding developments, the possibility of exempting substandard lots, and establishing an incremental process up to a limit.

Chair Toerge suggested broadening the subjective language regarding the definition of excessively large lots and surrounding neighborhoods. He stated that there could potentially be a large lot merger that would be detrimental to a smaller adjacent lot.

Commissioner Tucker commented on eliminating setbacks resulting in larger floor and buildable areas, a previous lot merger action, considering scale and the need to define the surrounding pattern of development and excessively large lots. He indicated that it might be preferable to have the ambiguity that exists currently in order to maintain flexibility and stated that he is unsure as to whether there is an issue other than consideration of total floor area.

Chair Toerge indicated he does not think there is a need to re-write the ordinance, addressed the need to understand the Code and questioned if there is a way to add weight to the impacts to adjacent properties versus the entire neighborhood.

Discussion followed regarding Council being the policy-making body and challenges with ascertaining Council's position.

Commissioner Brown felt that the issue comes down to the view and not as much as the size of a house adding that the Commission does not have the purview to enforce private views and wondered if a problem is not being sought for a solution. He addressed the frequency of the issue and agreed with the need to maintain flexibility by not having a lot of regulation and by assessing applications on a one-by-one basis.

Vice Chair Hillgren stated that the overarching goals and policies drive the matter and addressed protections for the applicants and their development rights, neighboring properties and the neighborhood. He commented on varying opinions and stated the need for clear definition such as the nature of the community the City is trying to protect. He stressed the need to establish a relative norm within each defined area (neighborhood, community, etc.) and determine its nature before planning criteria can be set.

Chair Toerge felt the issue of setback and how it might grow and expand has not been addressed satisfactorily; commented on varying setbacks, depending on lot sizes and stated that is the direction he

would like to see the Commission give to staff. He suggested trying to clear the ambiguity and giving consideration to giving more weight to closer-in properties or defining the pattern of development. Chair Toerge did not believe that radical changes will be made to the ordinance that will render it a problem to any areas in the City. He recommended limiting the floor-area-ratio, increasing setbacks on a scaled basis up to five (5) feet and clearing the ambiguity.

Commissioner Ameri agreed with the Chair's direction regarding the setback and noted its importance. He commented on the difficulty of defining a community and felt that it is not needed.

Vice Chair Hillgren felt that there is a rhythm to a pattern of development and addressed cases where more than two lots are being merged and neighboring properties are being affected.

Chair Toerge agreed that it may be another issue that could be addressed. He encouraged staff to try to generate language to develop a better solution.

Commissioner Tucker reported on a conversation with Council Member Selich and his opinion regarding setbacks and allowing the applicant to decide on the configuration.

Chair Toerge commented on the possibility of a hybrid concept regarding setbacks.

Commissioner Ameri stated that he has never designed a subdivision with a sixty-foot lot and three-foot setbacks. He expressed concerns that the discussion will get into too much detail and commented on the need to leave it to the market in terms of a demand for certain configurations and cautioned against over-regulating.

Commissioner Brown reiterated the importance of maintaining flexibility.

Interested parties were invited to address the Planning Commission on this matter.

Jim Mosher commented on how the issue was returned to the Planning Commission. He stated that additional details can complicate things, addressed different types of lots in the City and felt that some ambiguity may be good.

There being no others wishing to address the Planning Commission, Chair Toerge closed public comments for this item.

Commissioner Kramer arrived at this juncture (7:36 p.m.).

Deputy Community Development Director Brenda Wisneski clarified direction relative to substandard lots and reported that the matter will return to the Planning Commission at its first meeting in June.

Discussion followed regarding scale, street-facing elevations, protecting property owners' development rights, considering four-sided architecture and impacts on adjacent properties, suggesting alternatives for Council to consider while providing further direction, dealing with mergers of three (3) or more lots and corner lots.

Ensuing discussion pertained to clarifying direction to staff including setting setback requirements as a percentage of the lot width, defining terms as discussed above, exempting substandard lots and considering instances of mergers of three (3) or more lots.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 3 MOTION FOR RECONSIDERATION - None

ITEM NO. 4 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Deputy Community Development Director Wisneski reported that the City and the Planning Commission received two (2) awards from the American Planning Association. The Outstanding Planning Award was

presented for the Newport Banning Ranch Project and the other was for the community engagement for the Neighborhood Revitalization Program.

Assistant City Attorney Leonie Mulvihill provided an update on the ruling by the Orange County Court on the CEQA challenge to the Ocean Boulevard lot merger and noted that the Court agreed with the City and especially noted how thoroughly the Planning Commission, City Council, and staff considered the issues.

**ITEM NO. 5 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR
REPORT**

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

Vice Chair Hillgren, Commissioner Brown, and Commissioner Kramer noted that they will be absent the first Planning Commission meeting in June.

Chair Toerge noted that the Planning Commission meeting of May 23, 2013, will be canceled.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:01 p.m.

The agenda for the Regular Meeting was posted on May 3, 2013, at 10:30 a.m., on the City Hall Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Michael Toerge, Chairman

Fred Ameri, Secretary

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, June 6, 2013
REGULAR MEETING
6:30 p.m.

I. **CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Ameri

III. **ROLL CALL**

PRESENT: Ameri, Myers, Toerge, and Tucker

ABSENT (Excused): Brown, Hillgren, and Kramer

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Deputy Public Works Director David Webb; Melinda Whelan, Assistant Planner; and Patrick Alford, Planning Manager

IV. **PUBLIC COMMENTS**

Chair Toerge invited those interested in addressing the Commission to do so. There was no response and Chair Toerge closed the Public Comments portion of the meeting.

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 **MINUTES OF MAY 9, 2013**

Recommended Action: Approve and file

Chair Toerge acknowledged comments received from a member of the public, Jim Mosher.

Motion made by Commissioner Tucker and seconded by Commissioner Ameri and carried (3 – 1), to approve the minutes of May 9, 2013, as amended.

AYES: Ameri, Toerge, and Tucker

NOES: None

ABSTENTIONS: Myers

ABSENT: Brown, Hillgren, and Kramer

VII. **NEW BUSINESS**

ITEM NO. 2 **REVIEW OF PRELIMINARY FISCAL YEAR 2013-2014 CAPITAL IMPROVEMENT PROGRAM (PA2007-131)**
Site Location: Citywide

Assistant Planner Melinda Whelan introduced the item and highlighted a list of Capital Improvement Projects for Fiscal Year 2013-2014 and the related General Plan policies with which they are consistent. Ms. Whelan referenced a CIP presentation which was presented to Council and is

attached to the report and a slide she prepared on behalf of a request by Commissioner Tucker regarding Ocean Boulevard.

Commissioner Tucker addressed an item included in the CIP related to replacement of the Park Avenue Bridge, which is adjacent to a property that he owns. He reported that upon discussion of that item, he will recuse himself and will abstain from voting on the matter.

Discussion followed regarding a budget for the Civic Center and wondered if it is not a stand-alone project with bond monies.

Deputy Public Works Director David Webb reported that most of the money is from bond proceeds and that there is \$500,000 in the budget that will carry over to this year.

Discussion followed regarding Ocean Boulevard and the possibility of using lighter asphalt to blend in with the lighter colored streets rather than darker colored asphalt that stands out.

Ensuing discussion pertained to planning monies attached to construction projects as detailed in previous CIP presentations, funds allotted for community outreach, and funds budgeted for the Marina Park project.

Mr. Webb addressed the amounts budgeted for the various phases of the latter and the need to make additional allotments as the project moves into other phases.

Interested parties were invited to address the Commission on this matter.

Jim Mosher expressed concern regarding the ability to understand the supporting material and commented on the opportunity for obtaining public input and review of the various proposed projects by the Commission. He felt that all of the projects should be listed for review and that they should be consistent with all elements within the General Plan. He referenced a code section and presented an example of an inter-agency project noting that it is not included in the list. He hoped that a comprehensive list will be provided in the future.

There being no others wishing to address the Commission, Chair Toerge closed public comments for this matter.

Commissioner Ameri agreed that the list should include those projects with which other agencies are involved. He felt it would be helpful to have a comprehensive view of what is being done in the City.

Assistant City Attorney Leonie Mulvihill addressed the appropriate General Plan section related to the CIP noting that it requires the determination of consistency with the General Plan, which is the purpose of tonight's action. She noted that the code section referenced by Mr. Mosher is separate and pertains to the obligation of outside agencies to notify the City of projects affecting it.

Commissioner Ameri addressed the need for having additional information through a comprehensive list of projects affecting the City.

Chair Toerge clarified the action needed at this time.

Motion made by Commissioner Tucker and seconded by Commissioner Myers and carried (3 – 1), to determine that the CIP projects are consistent with the policies of the General Plan and direct staff to report this finding to the City Council.

AYES: Ameri, Myers, and Toerge
NOES: None
ABSTENTIONS: Tucker
ABSENT: Brown, Hillgren, and Kramer

ITEM NO. 3 DISCUSSION OF RESIDENTIAL LOT MERGER CODE AMENDMENT (PA2012-102)

Planning Manager Alford presented background on the aforementioned item and noted prior direction received from the Commission to consider the possibility of revising the findings for lot mergers, setbacks based on lot width, maintaining floor area limits, exempting substandard lots, applying the requirements City-wide, keeping consistent with development patterns, and mergers involving more than two lots. He noted an example of how the findings can be modified to provide additional direction and clarity to decision makers. Mr. Alford reported receiving comments from Commissioner Tucker making minor modifications to the proposed amendment.

Commissioner Tucker addressed challenges with the original language proposed and noticed distinctions between lot mergers and what gets developed. He commented on the Ocean Boulevard project and felt that the language needed clarity and that the house plans should not have been entertained at all. He addressed surrounding patterns of development and excessively large lots as well as the need to develop appropriate recommendations for the City Council.

He reviewed details of the revised amendment highlighting the language that he is proposing relative to the findings. He addressed compatibility and felt that the new language increases clarity.

Chair Toerge agreed with the need to eliminate ambiguity. He questioned using "nearby" rather than "adjacent or adjoining" and agreed with the need for clarity. He agreed with evaluating lots rather than developments when considering lot mergers and addressed the use of "unreasonable" rather than "material detriment" and noted the rights of property owners to build onto their properties without causing a detriment to adjacent lots.

Commissioner Ameri agreed with separating lot mergers from development, allowing for increased flexibility and previous projects considered. He addressed tying the orientation and development of properties to lot mergers and felt that they should be separate from each other.

Commissioner Myers suggested directing staff to develop a physical dimension as a guideline for defining "nearby," to provide some physical standard that is not arbitrary, including "defining adjacent or adjoining."

Commissioner Tucker stated agreement with Commissioner Myers comments.

Discussion followed regarding the need for consistency with the surrounding development and clarifying "adjacent" and "adjoining". It was noted that the term "nearby" is not clearly defined.

Assistant City Attorney Mulvihill commented the use of "nearby" in terms of serving the intent and the use of "unreasonable" versus "material detriment". She stated that "material" references specific things and stated the preference for the use of "unreasonable" because it will take a common sensible approach and will be evaluated on a case-by-case basis.

A straw vote of the Commission resulted in agreement to use the word "unreasonable".

Mr. Alford addressed suggestions regarding setbacks and tying them to the width of lots and setting minimum or maximum distances. He added that floor/area ratios can be controlled by increasing setbacks. He addressed side setbacks and issues related to areas outside the R-1 Zoning District and noted that they already have wider setbacks, larger lot requirements and are controlled by lot coverage. He listed the areas involved that are controlled by lot coverage rather than floor/area limits and addressed non-conformity.

Discussion followed regarding the process for going forward, options available, and developing recommendations for the City Council.

Interested parties were invited to address the Commission on this item.

Jim Mosher addressed specific findings and reported that a section of the Municipal Code that was recently changed by Council. He commented on reasons why this item was sent back to the Planning Commission by the City Council and approval by the Zoning Administrator of lot mergers, conditions of approval and suggested changes to the language.

There being no others wishing to address the Commission, Chair Toerge closed public comments on this item.

Commissioner Tucker commented on setbacks, Council's intent, and allocation of mass and the possibility of adding language to allow flexibility for the applicant for locating the mass/bulk. He felt that the Zoning Code should be amended to address the issue of lot mergers.

Chair Toerge addressed consistency when considering lot mergers and the possibility of conditional approval.

Commissioner Myers stated agreement with Commissioner Tucker in terms of needing to adjust the Zoning Code.

Discussion followed regarding side setbacks, massing of structures, creating burdens on adjacent properties, establishing clear standards for setbacks (i.e., ten percent of the lot width), setting minimum/maximum setbacks, and benefits of allowing for increased flexibility.

Commissioner Myers noted that lots created by mergers result in different lots and should be treated differently as they are developed. He noted it is preferable to allow owners the flexibility to create their own designs.

Chair Toerge addressed comments submitted by Commissioner Tucker in terms of "adjacent" and/or "adjoining" lots and agreed with deleting "nearby".

The matter was agreeable to all Planning Commissioners.

Discussion followed regarding avoiding rendering non-merged lots non-conforming and developing policies that are clear and allowing for increased flexibility.

The Planning Commissioners agreed with recommendations relative to setback issues.

Ensuing discussion pertained to floor/area ratio limitations being no different after the merge than before the merge and adding a provision to the Zoning Code that would allow a review of merged lots.

Mr. Alford summarized a recommendation to the City Council from the Planning Commission indicating that they should consider revising the findings per discussion this evening and that if there are additional concerns regarding massing or bulk, that they should consider revising the Zoning Code to place further restrictions on merged lots.

Ms. Mulvihill noted that the item tonight is simply a discussion and that Mr. Alford will report back to the City Council on the substance of the discussion.

At Chair Toerge's suggestion, Deputy Community Development Director Wisneski reported that the matter will be presented to the Planning Commission at its meeting on June 20, 2013, in order for the Planning Commission to develop formal recommendations to the City Council.

Commissioner Tucker reported that he will provide language to staff regarding a proposed process.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION - None

ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Wisneski reported on actions taken by the City Council during its last meeting, which included an initiation to amend the General Plan to investigate development potentials and the establishment of an advisory committee to support the amendment process.

She added that the Planning Commission can move forward with its meeting scheduled on June 20, 2013, since the Commission has now directed staff to return with consideration of a recommendation to the City Council regarding lot mergers.

ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES – None

Commissioner Tucker requested adjourning the meeting in memory of Isidore C. Myers, a close friend of his and father of Commissioner Myers.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:55 p.m. in memory of Isidore C. Myers.

The agenda for the Regular Meeting was posted on May 31, 2013 at 2:00 p.m., on the City Hall Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Michael Toerge, Chairman

Fred Ameri, Secretary